

The Concept of Hand Catching Operations on Corruption Eradication Based on the Value of Justice (Decision Study Number 97 / Pid / Prad / PN Jkt.Sel)

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Abstract

The rise of arrests made by the KPK, known as Operation Catch Hand or OTT, has led to a polemic of whether it is legal or not. This discourse arose at the beginning of the intensity of DPR member Fahri Hamzah. The aim of the research is to analyze hand-catching operations (OTT) in the eradication of corruption, whether it reflects the value of justice and to find the concept of eradicating corruption related to preliminary evidence collection with Hand Catching Operation (OTT) that is in accordance with the value of justice. The research method used is normative research. The result of the research is that the implementation of the Catching Hand Operation conducted by the Corruption Eradication Commission is punished in terms of the value of justice which is essentially a forced attempt, accruing the right of citizens, but because it is for the sake of proof that it is regulated in law, this action can be justified.

Keyword: Corruption Crime; Hand-Catching; Justice Value; Operation

INTRODUCTION

Indonesia is a rule of law that enforces supermasi which means upholding truth and justice. One of the efforts to get justice for suspects from formal procedures is through pretrial institutions. Pre-trial is the authority of the District Court to examine and decide on: whether or not an arrest and / or detention is legal or the request of a suspect or his family or other party or a suspect's proxy; whether or not the termination of investigation or prosecution is legal as regulated in Pasal 1 butir 10 dan Pasal 77 KUHAP.

The judge who sits in the pretrial hearing is a single judge, as affirmed by Pasal 78 Ayat (2) KUHAP of the Criminal Procedure Code, namely: "The pretrial is led by a single judge who is appointed by the Chairman of the" District Court and assisted by a clerk ". Pre-judicial institutions based on the criminal justice system in Indonesia only have the authority to examine (examining judges) on the implementation of several coercive attempts so that judges are not given a broader authority that includes investigating judges.

The main purpose of pretrial as stated in the Criminal Procedure Code, (hereinafter referred to as KUHAP) and based on the Constitutional Court Decision Number 21 / PUU-XII / 2014 is to carry out horizontal monitoring, examination of all acts of coercion (violating human rights). conducted by the investigator or the public prosecutor against the suspect during the investigation of the investigator or the prosecution, so that the said action does not contradict the applicable provisions.

The Corruption Eradication Commission (KPK) as one of the law enforcement officers according to Article 3 of Law Number 30 of 2002 concerning the Corruption Eradication Commission is a state institution that in carrying out its duties and authorities is independent and free from the influence of state power. The KPK is the investigator in confiscating assets from suspects who have committed criminal acts of corruption. Not only that, the KPK also has a role to provide a deterrent effect in order to prevent and eradicate existing corruption cases. In relation to the crime of money laundering, gratuities and others, the KPK has the authority in dealing with cases of criminal acts of corruption such as Hand Catch Operation. The operation of catching hands is not stated explicitly, meanwhile "Caught by hand" is regulated in 18 paragraph (2) of the Criminal Procedure Code.

Hand-Catching Operation (OTT) is linked to the definition of being caught hand in hand in the Criminal Procedure Code for parties who think that OTT is illegal based on the argument that the absence of the term Capture Operation in the existing Criminal Procedure Code is only Caught Hand. There is legal confusion because the Criminal Procedure Code does not recognize the term Hand-Catching Operation, in fact there is not even one statutory regulation in Indonesia that contains this term. However, that does not mean that automatic OTT is illegal.

The definition of being caught red-handed by the principle of due process of law still needs to be questioned. The definition of being caught red-handed (TT) according to Article 1 point 19 of the Criminal Procedure Code is "the arrest of a person while committing a criminal act or immediately after a while the criminal act has been committed, or a moment later the public is calling out to him as the person who committed it, or if a moment later at him. an object is found which is strongly suspected of being used to commit the criminal act which shows that he was the perpetrator or participated in or assisted in committing the criminal act "

The OTT of the KPK officers made an arrest of a person, then the actions of the arrest could be tested whether they were in accordance with the conditions of the arrest. For example, it turns out that the KPK officer who made the arrest was carried out without the warrant required in Article 18 paragraph (1) even though the incident was not caught red-handed, but 1 day after the criminal incident occurred, the arrest was still illegal even though it was within the framework of Hand Catch Operation. Eradicating criminal acts of corruption that should be tested for legal certainty, including the Setya Novanto case. The KPK in its defense must have said that the OTT's actions were based on the KPK SOP. However, the KPK leadership regulations in the form of SOPs should not contradict laws. The reason that the KPK has *lex specialis* authority has been stipulated in Article 46 paragraph (1) of the KPK Law because the special procedures in other laws do not apply under the KPK Law, only limitatively determined *vide* Article 12 of the KPK Law, excluding OTT which is trapping. This research aims to uncover the value of justice (Case Study of Preliminary Decision No. 97 / Pid / Prad / 2017 / PN. Jkt. Sel) in the operation of catching hands (OTT) of corruption and the concept of eradicating corruption related to the collection of preliminary evidence with the Hand Catch Operation (OTT) in accordance with the value of justice.

METHOD

This type of research used in this research is normative legal research. Normative juridical research, which is research that is focused on studying the application of the rules or norms in positive law. The approach used in this research is the statutory approach (statue approach), the case approach (case approach) and the conceptual approach (conceptual approach).

Researchers used primary, secondary and tertiary legal materials, the primary legal materials used were statutory judgments conducted by reviewing Law Number 8 of 1981 concerning KUHAP, Law Number 31 of 1999 juncto 20 of 2001 concerning the Eradication of Corruption, Law Number 30 of 2002 concerning the Corruption Eradication Commission, Preliminary Decision Number 97 / Pid / Prad / PN Jkt.Sel. Secondary legal materials include, among others: books, journals and articles, and tertiary legal materials, among others, materials that provide instructions and explanations for primary and secondary legal materials.

DISCUSSION

In the criminal procedural law, certain officials are given the authority to limit a person's freedom and independence in various forms of activity. This restriction of freedom and independence is an act or forceful effort that must be done in following the orders of the law. The Criminal Procedure Code has determined that there are several acts or attempts to force that can be carried out in connection with the occurrence of a criminal act committed by a person. The Criminal Procedure Code authorizes investigators, including the power to reduce a person's freedom and human rights. The use of this power must be based on laws and principles that uphold human dignity and ensure a balance between protecting the interests of the suspect on the one hand, and the interests of the wider community, the public interest on the other.

The powers that the law gives to investigators that limit a person's freedom and human rights can be carried out in the form of acts of arrest, detention, confiscation and search. Arrest is an act by an investigator in the form of temporarily restricting the freedom of a suspect or defendant if there is sufficient evidence for the purposes of investigation or prosecution and / or trial in matters and according to methods regulated in this law.

Officials authorized to make arrests are:

- a. The investigator, on the order of the investigator, has the authority to make an arrest for the purpose of investigation
- b. Investigators and assistant investigators are authorized to make arrests for the purpose of investigation.

Article 17 of the Criminal Procedure Code stipulates that an investigator and investigator / assistant investigator shall arrest a person who is strongly suspected of committing a criminal act, and must be based on sufficient preliminary evidence, This provision indicates that an arrest warrant cannot be made arbitrarily but is directed at those who have actually committed a criminal act.

The definition of "sufficient preliminary evidence" is still unclear, so in practice this problem is highly dependent on the objective assessment of investigators and investigators. The meaning of "sufficient preliminary evidence" as explained in the Elucidation of Article 17 of the Criminal Procedure Code is preliminary evidence to suspect a criminal act, in accordance with the provisions of Article 1 point 14 of the Criminal Procedure Code. However, as a guideline in practice it is usually based on the testimony of witnesses who show the suspect as the perpetrator is supported by other evidence, such as evidence of evidence, and so on.

Referring to Article 17 of the Criminal Procedure Code and its explanation, there is no explicit provision that states what initial evidence is sufficient. However, later, in the Decision of the Constitutional Court (MK) Number 21 / PUU-XII / 2014 it was stated that the phrases "preliminary evidence", "sufficient initial evidence", and "sufficient evidence" as specified in Article 1 number 14, Article 17, and Article 21 paragraph (1) KUHAP must be interpreted by at least two pieces of evidence contained in Article 184 KUHAP. As for the valid evidence according to Article 184 paragraph (1) of the Criminal Procedure Code is witness testimony; expert statement; letter; instructions; and the statement of the defendant.

The Constitutional Court argued that the Criminal Procedure Code did not provide an explanation regarding the limit on the number (evidence) of the phrases "preliminary evidence", "sufficient preliminary evidence", and "sufficient evidence". The Constitutional Court considers the minimum requirement of two pieces of evidence and examination of a potential suspect for transparency and protection of a person's human rights before being declared a suspect can provide a balanced statement. This avoids arbitrary action by the investigator, especially in determining sufficient preliminary evidence

The investigator will carry out the task of arresting the investigator by showing a letter of assignment and giving the suspect an arrest warrant stating the suspect's identity and stating the reasons for the arrest and a brief description of the crime case suspected and the place where he is being examined. In the event of being caught in the act, the arrest is carried out without a warrant, provided that the catcher must immediately hand over the caught and existing evidence to the nearest investigator or assistant investigator.

In the event that the perpetrator is caught in the act, alternative conditions must be met, meaning that if one of them is met, it can be categorized as being caught red-handed. However, in this provision there are weaknesses, namely it does not explain how long it means "immediately after the criminal act is committed" and "if a moment later objects are found ..."

Considering that being caught in the act is part of the realm of arrest, according to Article 19 paragraph (1) of the Criminal Procedure Code, an arrest can be made for a maximum of one day. Thus, the problem of carrying out arrests carried out by investigators in handling criminal acts, including corruption, is said to be valid if it meets one of the requirements.

Meanwhile, OTT is not mentioned in the Criminal Procedure Code and the Corruption Act, as well as the KPK Law. OTT is the KPK term for "catching red-handed" someone suspected of being a corruption actor. An operation that is secretive, measurable and the victims are rarely able to survive accusations because it is based on a long process when the KPK "sniffs" the existence of corruption.

The term OTT has just appeared in the Presidential Regulation of the Republic of Indonesia (Perpres) Number 87 of 2016 concerning the Task Force to Clean Up Illegal Levies. Presidential Decree Number 87 of 2016 establishes a Task Force to Clean Up Illegal Levies, hereinafter referred to as the Saber Pungli Task Force, which is located under and responsible to the President.

Minister The Coordinator for Political, Legal and Security Affairs is in charge of the Saber Pungli Task Force, with the Chief Executive of the Police General Supervision Inspector. The task of the Saber Extortion Task Force is to carry out the eradication of illegal levies effectively and efficiently by optimizing the use of personnel, work units and infrastructure, both in ministries / institutions and local governments.

In at the regional level the Saber Pungli Team was formed by a Governor Decree. The working period of the Saber Team is one year, with a budget from the governor and district / city with a budget from the regent / mayor. In East Java, for example, the Saber Pungli Team was formed by Governor Decree No. 188/624 / KPTS / 013/2016 concerning the Task Force for Cleansing Pungli of East Java Province, dated 4 November 2016. The budget from the governor is 3 billion a year.

The members of the Saber Extortion Task Force include: Police, Regional Government Legal Bureau, Inspectorate, Prosecutor, Intelligence, Ombudsman, Experts / Academics. The structure of the Saber Pungli consists of the Intelligence Sub-Task Force, the Prevention Sub-Task Force, and the Enforcement Sub-Task Force. So Saber doesn't just take action. The results of Saber Pungli's work are reported to their respective superiors.

CONCLUSION

To prevent human rights violations of suspects / defendants, the Corruption Eradication Commission collaborates with other investigating agencies to formulate standard provisions on the procedures for conducting Hand Catching Operations that accommodate the human rights of suspects in the form of a Joint Decree which is the reference for all investigators in carrying out Hand Catching Operations.

While there is no regulation on wiretapping, the Head of the Corruption Eradication Commission needs to immediately stipulate a regulation on the wiretapping mechanism as an implementing rule for Law Number 30 of 2002 concerning the Corruption Eradication Commission, then there is socialization and there needs to be public participation which must be expanded through coordination, supervision and prevention of corruption (korsupgah). Furthermore, the Government and the DPR need to immediately enact the Tapping Law as the legality of wiretapping for the KPK, the Attorney General's Office, the Police and the National Intelligence Agency by taking into account the aspirations of the agency.